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22 *Signature Pages]*

23 UNITED STATES DISTRICT COURT  
24 NORTHERN DISTRICT OF CALIFORNIA  
25 OAKLAND DIVISION

26 IN RE CALIFORNIA BAIL BOND  
27 ANTITRUST LITIGATION

28 THIS DOCUMENT RELATES TO:  
ALL ACTIONS

Master Docket No. 19-cv-00717-JST

CLASS ACTION

**DEFENDANTS' RESPONSE TO  
AUTHORITIES SUBMITTED BY  
PLAINTIFFS AT ORAL ARGUMENT**

Judge: Hon. Jon S. Tigar  
Hearing Date: August 26, 2020  
Courtroom: 2, 4th Floor  
Time: 2:00 p.m.  
Trial Date: Not Set

1 Pursuant to the Court’s instructions at the August 26, 2020 hearing on Defendants’ Motion to  
2 Dismiss (*see* ECF No. 132), Defendants submit the following response to the two cases presented by  
3 Plaintiffs for the first time at oral argument (*see* ECF No. 133):<sup>1</sup>

4 *In re Delta/Air Tran Antitrust Litigation* and *In re Domestic Airline Travel Antitrust Litigation*  
5 are out of circuit district court decisions and neither answers the question posed by the Court: what,  
6 as a matter of law, is the minimum that Plaintiffs must plead to show that any particular Defendant  
7 participated in the alleged antitrust conspiracy? The Ninth Circuit set a clear floor for such allegations  
8 in *Kendall v. Visa U.S.A., Inc.*, when it held that a complaint must “answer the basic questions: who,  
9 did what, to whom (or with whom), where, and when” regarding how *each* individual defendant first  
10 joined, and then participated in the alleged cartel. 518 F.3d 1042, 1048 (9th Cir. 2008). Critically,  
11 the Ninth Circuit explained that “parallel conduct, even conduct consciously undertaken” was not  
12 enough to meet this threshold—the plaintiff must also allege “further circumstance[s] pointing toward  
13 *a meeting of the minds.*” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557 (2007))  
14 (emphasis added). The SCAC’s rote, copy-pasted allegations fail this clear test. Plaintiffs have only  
15 alleged supposed parallel conduct by the Defendants without additional facts suggesting when, where,  
16 or how Defendants reached any kind of agreement (let alone one that allegedly spanned 16 years and  
17 28 Defendants, with the number of Surety Defendants doubling over the class period). As in *Kendall*,  
18 Plaintiffs “pleaded only ultimate facts, such as conspiracy, and legal conclusions. They failed to plead  
19 the necessary *evidentiary facts* to support those conclusions.” 518 F.3d at 1047-48 (emphasis added).

20 Plaintiffs’ new authorities only underscore the weakness of their complaint in this regard. In  
21 both cases, the plaintiffs made far more detailed allegations about the formation of the alleged  
22 conspiracy, including who attended specific meetings, what was discussed at those meetings that  
23 would suggest unlawful collusion, how defendants aligned their business practices after meetings, and  
24 additional statements that were made by specific defendants during the same time period that  
25 evidenced a meeting of the minds occurred. The plaintiffs in *Domestic Airline Travel* for instance  
26 were able to plead a series of specific statements (1) from corporate officers at each and every  
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28 <sup>1</sup> Abbreviations herein have the same definitions as in Defendants’ Motion to Dismiss (ECF No. 112).

1 defendant; (2) that were close together in time; and (3) which were immediately followed—in a  
2 notable change from prior trends—by passenger capacity cuts at each defendant airline. *See* 221 F.  
3 Supp. 3d 46, 62-65 (D.D.C. 2016). The plaintiffs in that case also quoted specific statements made by  
4 defendants’ executives at multiple conferences and trade meetings regarding capacity cuts that  
5 suggested defendants were working to enforce the conspiracy. *See id.* at 65. Similarly, in *Delta/Air*  
6 *Tran*, the plaintiffs alleged not a handful of isolated statements but a “roughly six month dialogue”  
7 between both defendants about imposing new bag fees from both named defendants over a discrete  
8 period, which were followed immediately by each defendant reducing capacity and introducing new  
9 fees. 733 F. Supp. 2d 1348, 1354-57 (N.D. Ga. 2010). Crucially, the court noted that it was these  
10 changed business practices “combined with the preceding communications” that together gave rise to  
11 a plausible inference of conspiracy. *Id.* at 1361 (emphasis added).

12 Here by contrast, as in *Kendall*, Plaintiffs do not allege any statements of any kind as to the  
13 vast majority of Defendants. (*See* Defs.’ Mot. Appx. A.) And the handful of alleged statements that  
14 Plaintiffs rely on were not subsequently followed by uniform conduct, but by increased diversification  
15 both in the premium rates offered by different Defendants and in the criteria used for standard vs.  
16 preferred rates. (*See id.* at Appx. B.) Indeed, many of the Defendants in this case were not even in  
17 the California bail bond market when the statements were made. (*See id.*) Furthermore, the SCAC’s  
18 allegations regarding trade association meetings pale in comparison to the complaints in *Domestic*  
19 *Airline Travel* and *Delta Air Train*. Here, Plaintiffs allege that two relevant trade association meetings  
20 occurred over the 16-year class period, do not even allege that a single Surety Defendant attended one  
21 of the meetings, fail to identify any Defendant attendees at the second meeting, and point to no specific  
22 statements made by any attendee of either meeting. (*See* Defs.’ Mot. at 30-32.)

23 At the hearing, Plaintiffs’ repeated refrain was that the law does not require them to do the  
24 impossible. This is correct. As *Domestic Airline Travel* and *Delta/Air Tran* illustrate, it is entirely  
25 possible for an antitrust plaintiff to plead factual allegations that answer “basic questions” about how  
26 the alleged conspiracy was formed and how each individual defendant played a role in it, as the law  
27 requires in the Ninth Circuit. *Kendall*, 518 F. 3d at 1048. Plaintiffs have simply failed to do so here.  
28 The SCAC fails not because of some impossibly high legal standard, but because it has no specific

1 allegations about how each individual defendant founded, joined, or operated in a purportedly vast  
2 and long running conspiracy. Accordingly, the Court should dismiss the SCAC in its entirety.

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**ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)**

I, Beatriz Mejia, attest that concurrence in the filing of this document has been obtained from the other signatories. Executed on August 28, 2020, in San Francisco, California.

/s/ Beatriz Mejia  
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